रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

सी.जी.-डी.एल.-सा.-27122025-268847
CG-DL-W-27122025-268847

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 10] नई दिल्ली, दिसम्बर 21—दिसम्बर 27, 2025, शनिवार/ अग्रहायण 30—पौष 6, 1947
No. 10] NEW DELHI, DECEMBER 21— DECEMBER 27, 2025, SATURDAY/ AGRAHAYANA 30– PAUSHA 6, 1947

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्यक्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए साधारण आदेश और अधिसूचनाएं
Orders and Notifications issued by the Central Authorities (Other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 22 दिसम्बर, 2025

आ.अ. 28.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 (क) के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं0 30/2024 में दिये गये उच्च न्यायालय ओडिशा, कटक के तारीख 19 नवम्बर, 2025 के आदेश को प्रकाशित करता है ।

[फा. सं. 82/OR-HP/(30/2024)/ES-II/2025]

आदेश से,

सुजीत कुमार मिश्र, सचिव

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 22nd December, 2025

O.N. 28.—In pursuance of Section 106 (a) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order dated 19th November, 2025 of the High Court of Odisha, Cuttack in Election Petition No. 30/2024.

[F. No. 82/OR-HP/(30/2024)/ES-II/2025]

By Order,

SUJEET KUMAR MISHRA, Secy.

IN THE HIGH COURT OF ORISSA AT CUTTACK

ELPET NO.30 OF 2024

Dr. Subash Mohapatra **....** **Election Petitioner**

Mr. Akshaya Kumar Subudhi, Advocate

-versus-

Dharmendra Pradhan & others **....** **Respondents**

Mr. G.K. Agarwal, Sr. Advocate

Along with Ms. S. Srivastava, Advocate

(for Respondent No. 1)

CORAM: JUSTICE SANJAY KUMAR MISHRA

ELPET No.30 of 2024 & I.A. No.10 of 2025

Date of Hearing: 24.10.2025 **Date of Order: 19.11.2025**

Order No. 36.

1. This application has been filed by the Respondent No.1 in ELPET No. 30 of 2024, whose election is under challenge, with the following prayers;

PRAYER

"It is therefore prayed that this Hon'ble Court be graciously pleased to pass order/orders to strike out/delete the pleadings made under Paragraphs 1 to 6, 6A to 6X and 7 to 14 of the Election Petition in exercise of power under Order VI Rule 16 C.P.C. and also reject/dismiss the Election Petition in its entirety at the very threshold under section 86 of the R.P. Act, 1951 r/w Order VII Rule 11 C.P.C.

AND pass such order/orders as deem fit and proper under the facts and circumstances of the case.

AND for this act of kindness the present Petitioner/Respondent as in duty bound shall ever pray."

2. The Court observes that, despite giving ample opportunity to file Objection, the Election Petitioner failed to file any written objection opposing to the prayers made in this application. Hence, this Court was constrained to consider this application in absence of any written objection filed by the Election Petitioner. Though hearing on the I.A. was substantially made on 15.05.2025, but could not be concluded till 24.10.2025 because of filing of various petitions by the Election Petitioner during midst of hearing of the present I.A. Finally the matter was re-heard on 24.10.2025. Hearing was concluded and order was reserved, permitting the parties to file their Written Notes of Submission and Citations by 7th November, 2025. Pertinent to mention here that during hearing of the I.A. on 24.10.2025, learned Counsel for the Election Petitioner, instead of making oral submissions, opted to file written notes of submission and filed a memo to the said effect in the Court, which was allowed. Despite giving opportunity vide the said order dated 24.10.2025 to file written notes of submission so also citations, if any, by 7th November, 2025, the Election Petitioner failed to avail such opportunity.

3. The ELPET No. 30 of 2024 has been preferred by the Election Petitioner, who is an unsuccessful candidate from 03–Sambalpur Parliamentary Constituency in the General Election 2024, challenging the election of the Respondent No.1 (present Petitioner), who was duly declared elected after securing the majority of valid votes, seeking the following declarations:

> **I.** The nomination and the affidavit in Form-26 filed by the Respondent No.1 are null and void for alleged non-disclosure and incorrect information regarding assets, liabilities and criminal antecedents.
>
> **II.** The election of Respondent No.1 is void and illegal for having filed false and incomplete affidavit suppressing the material facts that materially affected the result of the election.
>
> **III.** Votes polled in favour of the Respondent No.1 are invalid and void.
>
> **IV.** The Election Petitioner is duly elected as a Member of Parliament from 03–Sambalpur Parliamentary Constituency having polled majority of votes in his favour.

4. The Respondent No.1 has filed the present application under Order VI Rule 16 & Order VII Rule 11 of CPC, read with Section 86 of the R.P. Act, seeking rejection of the entire Election Petition on the grounds of non-compliance of the mandatory provisions of Section 81(3) and Section 83 of the Representation of the People Act, 1951, shortly hereinafter "the R.P. Act", as the copy of the Election Petition served on the Respondent No.1 is not the exact and true copy of the same, as filed in the Court. Further, the pleadings made in the Election Petition allegedly do not contain the basic and material facts and particulars necessary to constitute a complete cause of action on which the Election Petitioner relies, as enumerated under Section 83(1)(a) of the Act, 1951, rendering the Election Petition unnecessary, frivolous, vexatious, scandalous and politically motivated. Thus, such pleadings in the Election Petition amount to abuse of the process of the Court and are liable to be struck off under Order VI Rule 16 of CPC and consequently, the Election Petition deserves to be dismissed under Order VII Rule 11 of CPC.

4.1 It is the case of the Respondent No.1 that, the Election Petition has not been duly signed and verified by the Election Petitioner as required under Section 83(1)(C) of the R.P. Act read with Order VI Rule 15 of CPC. Further, the affidavit appended to the Election Petition has not been sworn before a Notary Public or Oath Commissioner resulting in complete lack of oath and affirmation of Election Petitioner in violation of requirements under Section 81(3) of the R.P. Act.

4.2 It has further been pleaded that, the Petitioner has not annexed or produced the documents referred to in the Election Petition, basing on which the averments have been made in the Election Petition, which is in contravention of the Provisions enumerated under Section 83(2) of the R.P. Act, read with Order VII Rule 14 of CPC.

4.3 Despite alleging commission of corrupt practice, the Election Petitioner has also failed to file the affidavit in Form-25 prescribed under the Proviso to Section 83(1), read with Rule-94A of the Conduct of Election Rules, 1961, shortly "the Rules, 1961".

4.4. The Election Petition also does not disclose the names of persons, dates, places or details of alleged corrupt practices, which is in violation of Section 83(1)(b) of the R.P. Act. Moreover, as none of the ingredients of Section

100, 101 or 123 of the R.P. Act, 1951 have been satisfied in the Election Petition, the Election Petition, being incomplete, is liable to be dismissed under Section 86 of the R.P. Act.

4.5. A further ground has been urged by the Respondent No.1 in the I.A. that the averments made under Paragraph Nos. 6, 6A to 6X of the Election Petitioner are false, frivolous, vexatious, and scandalous so also bereft of material facts and particulars, thereby disclosing no cause of action, as required under Section 83 of the R.P. Act. Further, the averments made in the Election Petition being baseless, are an attempt to abuse the process of this Court.

4.6. Further, the allegations regarding improper swearing of affidavits in Form-26 by the Respondent No.1, falsification or alteration of nomination papers, suppression of criminal cases as well as non-compliance with the directions and instructions of the Election Commission of India or Supreme Court are malafide and unsupported by any material or source of information. Further, the allegation as to the Respondent No.1 holding an office of profit as Chairman of Odisha Research Centre, it has been stated that as the said Institution is a charitable body, Trustee of such Institution shall act in a pro bono capacity.

4.7. So far as allegations of alteration of Form-26, suppression of assets or criminal antecedents, filing of false affidavit and commission of corrupt practices under Sections 123 and 125A of the R.P. Act, it is the stand of the Respondent No.1 that, such allegations are based on surmises and conjectures, unsupported by material facts with no particulars of time, place and persons involved so also without the mandatory affidavit in Form-25, as prescribed under the Proviso to Section 83 of the R.P. Act, read with Rule 94A of the Rules, 1961.

4.8. A ground has also been agitated by the Respondent No.1 that, allegations regarding non-disclosure or misreporting of election expenditure under Sections 77 and 78 of the R.P. Act, non-publication of criminal antecedents, invalidity of nominations as well as the throwaway votes are repetitive, speculative and baseless. It has further been stated that, the violations of Sections 77 and 78 do not constitute a ground for setting aside an election under Section 100 of the R.P. Act, as a separate mechanism has been provided under the R.P. Act and the same cannot be a ground to challenge the election of the Respondent No.1.

5. Emphasizing the legal provisions so also the settled position of law, learned Senior Counsel for the Respondent No.1 submitted that, Section 83(1)(a) of the R.P. Act mandates that, an election petition must contain a concise statement of material facts on which the Petitioner relies. Omission of material facts renders the Petition liable to be dismissed under Order VII Rule 11(a) of CPC. "Material Facts" are those facts which constitute the complete cause of action and would afford the basis for the allegations made. Thus, omission of a single material fact would lead to an incomplete cause of action and the Plaint would become bad. Learned Senior Counsel for the Respondent No.1 further submitted that, Election Petitions, being serious in nature, cannot be treated lightly or in a fanciful manner or used for vexatious purpose. Thus, an election petition, lacking even a single material fact, is liable to be summarily dismissed.

6. Learned Senior Counsel for the Respondent No.1, relying on the Judgment of the Supreme Court in **Jyoti Basu & others Vs. Debi Ghosal & others**, reported in (1982) 1 SCC 691 submitted that, the rights to vote, to be elected, and to challenge an election are purely statutory rights, exercisable only in the manner prescribed under the R.P. Act, 1951, and are subject to the statutory limitations therein. Therefore, an election petition filed in non- compliance with the provisions enshrined under the R.P. Act, 1951, read with Rules framed thereunder, is liable to be dismissed in limine.

7. Learned Senior Counsel for the Petitioner, further relying on the Judgments of the Supreme Court in **Dr. Shipra (Smt) and Ors Vs. Shanti Lal Khoiwal and Ors** reported in (1996) 5 SCC 181, **Ravinder Singh Vs. Janmeja Singh & others** reported in (2000) 8 SCC 191, **P.A. Mohammed Riyas Vs. M.K. Raghavan & others** reported in (2012) 5 SCC 511 and **C.P. John Vs. Babu M. Palissery & others** reported in (2014) 10 SCC 547, submitted that the Election Petitioner has failed to disclose the names of the persons who have committed the alleged corrupt practice so also the date, place and time of commission of such corrupt practice as well as the details of persons involved in the corrupt practice. Hence, it was submitted that, in the absence of such material facts and particulars, the Election Petition is liable to be rejected at the threshold.

8. Reliance was also placed on the Judgments of the Supreme Court reported in **Azhar Hussain Vs. Rajiv Gandhi,** reported in (1986) Supp SCC 315, **Hari Shankar Jain Vs. Sonia Gandhi**, reported in (2001) 8 SCC 233, **Ram Sukh Vs. Dinesh Agarwal**, reported in (2009) 10 SCC 541, **Kannimozhi Karunanidhi Vs. A. Santhana Kumar & Ors.,** reported in (2023) SCC OnLine SC 573 and Karim Uddin Barbhuiyan Vs. Aminul Haque Laskar & Ors., reported in (2024) SCC OnLine SC 509, so also judgment of Karnataka High Court in **Mohan Kumar B. v. Shobha Karandlaje**, reported in 2025 SCC OnLine Kar 1175.

9. Before dealing with the application under Order VII Rule 11 of C.P.C., this Court deems it appropriate to examine the scope of Order VII Rule 11. It is well settled principle in law that while considering an application under Order VII Rule 11 of the CPC, the Court must confine itself to the averments made in the plaint or petition and the documents filed therewith. The defence set up in the written statement is immaterial at this stage. Further, the plaint or petition must disclose a clear cause of action so also raise triable issues and if the pleadings are vague, bereft of material facts, or fail to disclose a cause of action, the plaint/petition is liable to be rejected. Furthermore, the Court must ensure that the grounds urged in the application fall within the parameters of Order VII Rule 11 of CPC.

10. At this juncture, provisions enshrined under Order VII Rule 11 of CPC are extracted below for ready reference:

> *"**11. Rejection of plaint**.— The plaint shall be rejected in the following cases:—*
>
> ***(a) where it does not disclose a cause of action;***
>
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
>
> *(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
>
> ***(d) where the suit appears from the statement in the plaint to be barred by any law;***
>
> ***(e) where it is not filed in duplicate;***
>
> *(f) where the plaintiff fails to comply with the provisions of rule 9;*
>
> *Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp- paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."*
>
> ***(Emphasis supplied)***

11. In P.V. Guru Raj Reddy vs. P. Neeradha Reddy, reported in (2015) 8 SCC 331, the Supreme Court held as follows:

> *"5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial."*
>
> *6. In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie disclose that the suit is barred by limitation or is barred under any*

other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order 7 Rule 11 the stand of the defendants in the written statement would be altogether irrelevant."

(Emphasis Supplied)

12. In view of the grounds urged in this I.A., this Court deems it apt to reproduce the provisions enshrined under Sections 81, 82, 83, 86 and 100 of the R.P. Act which lay down the presentation of election petitions (Section 81), parties to the petition (Section 82), the contents and form of the petition (Section 83), the procedure for trial of election petitions (Section 86) and the grounds for declaring an election void (Section 100) for ready reference:

***"Section 81. Presentation of petitions**.— **(1)** An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.*

***Explanation.—** In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.*

(2)[* *]*

*(3) "Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition **and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.***

***Section 82. Parties of the petition.—** A petitioner shall join as respondents to his petition—*

(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

***Section 83. Contents of petition.—** (1) An election petition—*

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

Section 86. Trial of election petitions.— (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation.—*An order of the High Court dismissing an election petition under this sub- section shall be deemed to be an order made under clause (a) of section 98*

(2) xxxxxxxxxxx
(3) xxxxxxxxxx
(4) xxxxxxxxx

*(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition**, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.***

Section 100. Grounds for declaring election to be void.— *(1) Subject to the provisions of sub- section (2) if the High Court is of opinion— (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act [or the Government of Union Territories Act, 1963 (20 of 1963)]; or*

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination; or

(ii) by any corrupt practice committed in the interests of the returned candidate [by an agent other than his election agent]; or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, [the High Court] shall declare the election of the returned candidate to be void.

(2) If in the opinion of [the High Court], a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice [***] but [the High Court] is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

[*****]

(b) xxx xxx

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt [***] practices at the election; and

(d) that in all other respects the election was free from any corrupt [***] practice on the part of the candidate or any of his agents,
then [the High Court] may decide that the election of the returned candidate is not void."

(Emphasis supplied)

13. With regard to the verification of election petitions, Order VI Rule 15 of CPC, being relevant, is reproduced below for ready reference:

> ***"15. Verification of pleadings.—*** *(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.*
>
> *(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.*
>
> *(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.*
>
> *(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings."*

14. Form No.25, prescribed under Rule 94A of the Conduct of Election Rules, 1961, which provides the format of affidavit to be filed in support of allegations of corrupt practice, being relevant, is extracted below;

> **"FORM 25**
> *(See rule 94A)*
> **AFFIDAVIT**
>
> *I, …….. the petitioner in the accompanying election petition calling in question the election of Shri/Shrimati …… [respondent No. ……..] in the said petition, make solemn affirmation/oath and say—*
>
> ***(a) that the statements made in paragraphs …… of the accompanying election petition about the commission of the corrupt practice of …… and the particulars of such corrupt practice mentioned in paragraphs …… of the same petition and in paragraphs …… of the Schedule annexed thereto are true to my knowledge;***
>
> ***(b) that the statements made in paragraphs …… of the said petition about the commission of the corrupt practice of …… and the particulars of such corrupt practice given in paragraphs …… of the said petition and in paragraphs …… of the Schedule annexed thereto are true to my information;***
>
> *(c)*
> *(d)*
> *etc.*
>
> *Signature of deponent.*
>
> *Solemnly affirmed/sworn by Shri/ Shrimati …… at …… this …… day of …… 20……*
>
> *Before me, Magistrate of the first class/ Notary/Commissioner of Oaths.]*
>
> * ***Here specify the name of the corrupt practice."***
>
> ***(Emphasis supplied)***

15. On perusal of Election Petition/Plaint, it is ascertained that, the verification appended to the Election Petition distinctly specifies the statements which are based upon the Election Petitioner's personal knowledge and which are based upon the information derived from official records. Further, it also bears the signature of the Verificant so also the place and date of verification. Thus, this Court is satisfied that, the verification substantially complies with the provisions enshrined under Section 83 (1) (c) of the R.P. Act so also Order VI Rule 15 of CPC.

16. However, though the affidavit accompanying the Election Petition has been duly sworn before the Notary Public/ Oath Commissioner so also contains a declaration that the statements are true to the best of Election Petitioner's knowledge and information derived from official records, it does not follow the format under Form 25, as prescribed under the Rule 94A of the Rules, 1961. Furthermore, the affidavit does not contain the specific nature of the corrupt practice alleged to have been committed by the Respondent No.1, as mandated under the asterisked portion of Form 25, referred to in Rule 94A of the Rules, 1961.

17. It is further ascertained from the record that, the original summons issued to the Respondent No.2 for filing of written statement and settlement of issue is not the exact copy of the Election Petition filed by the Election Petitioner before the Court. The verification so also the affidavit appended to the Election Petition have not been duly notarized before a Notary Public or Oath Commissioner. Furthermore, the affidavit does not bear the signature of the identifying Advocate. Consequently, the said copy cannot be said to be exact copy of the Election Petition, as filed before this Court.

18. With regard to the service of "true copy" of the Election Petition to the Respondent, as contemplated under Section 81(3) of the R.P. Act, the relevant observation of the Supreme Court in **T. Phungzathang v. Hangkhanlian**, reported in (2001) 8 SCC 358, are extracted below;

> *"10. Apart from holding that the views expressed in Dr Shipra case [(1996) 5 SCC 181] are only confined to the fact situation of that case, in Jacob case [(1999) 4 SCC 274] the Constitution Bench turned down the contention advanced on behalf of the appellant that if the copy of the affidavit supplied to the respondent in an election petition does not contain the name and other particulars of the Notary or the stamp and seal of the Notary which had been affixed on the affidavit filed along with the election petition, the same would amount to violation of Section 81(3) of the Act, and such variation between the original affidavit filed before the High Court and the copy supplied to the respondent would render the copy as not a "true copy" of the original, hence, the election petition is liable to be rejected.*
>
> *12. And after considering the similar views expressed by a later Constitution Bench judgment in Ch. Subbarao v. Member, Election Tribunal [1964 SC 1027 : (1964) 6 SCR 213] this Court in Jacob case [(1999) 4 SCC 274] held that* ***the object of serving a true copy of an election petition and the affidavit filed in support of the allegations of corrupt practice on the respondent in the election petition is to enable the respondent to understand the charge against him so that he can effectively meet the same in the written statement and prepare his defense. The requirement is, thus, of substance and not of form****. Having come to the said conclusion, this Court in Jacob case [(1999) 4 SCC 274] held: (SCC p. 290, para 36)*
>
> > *"36. The expression 'copy' in Section 81(3) of the Act, in our opinion, means a copy which is substantially so and which does not contain any material or substantial variation of a vital nature as could possibly mislead a reasonable person to understand and meet the charges/allegations made against him in the election petition. Indeed a copy which differs in material particulars from the original cannot be treated as a true copy of the original within the meaning of Section 81(3) of the Act and the vital defect cannot be permitted to be cured after the expiry of the period of limitation."*
>
> ***13. From the above conclusion of this Court in Jacob case [(1999) 4 SCC 274], two principles can be deduced: (a) the expression "copy" in Section 81(3) of the Act means a copy which is substantially the same as the original, variation if any from the original should not be vital in nature or should not be such that can possibly mislead a reasonable person in meeting the allegation; (b) if the copy differs in material particulars from the original the same cannot be cured after the period of limitation.***

14. Having laid down the law as stated above, the Court in Jacob case [(1999) 4 SCC 274] proceeded to apply the same to the facts of that case, and came to the conclusion that non-mention of the name of the Notary or the absence of the stamp and seal of the Notary in the otherwise true copy supplied to the appellant could not be construed to be an omission or variation of a vital nature and the defect, if at all it could be construed as a defect, not attracting the consequences of Section 86(1) of the Act. It further held that under the circumstances, it must be held that there was no failure on the part of the election petitioner to comply with the last part of sub-section (3) of Section 81 of the Act, hence, Section 86(1) was not attracted entailing the dismissal of the election petition.

17. In the above-declared legal position, if we examine the case in hand, we notice that the only lacuna pointed out by the contesting respondent in his application in Civil Miscellaneous Election Case No. 3 of 2000 is that the copy supplied to him did not contain the verification or affirmation made by the Oath Commissioner or the prescribed authority as required in Form 25 and Rule 94-A of the Conduct of Elections Rules, 1961. It is not the case of Respondent 1 that the original affidavit filed along with the election petition in Form 25 did not contain such verification or affirmation. On the contrary, it is an admitted fact that such affirmation or verification was made in the original affidavit filed before the High Court. ***Therefore, the question arising in this appeal is: would this omission as pointed out by the respondent in his petition, ipso facto entail dismissal of the election petition under Section 86(1) of the Act? In view of the law laid down in Jacob case [(1999) 4 SCC 274] the answer then should be "no" because by such omission the copy supplied will not cease to be a "true copy" and there is no possibility of any prudent person being in any manner misled in defending himself or being prejudiced in the defence of his case. Further, such omissions are only curable irregularities.***

19. Having come to the conclusion that the facts of the present appeal are fully covered by the Constitution Bench judgments of this Court in Jacob case [(1999) 4 SCC 274] and Deshmukh case [(1999) 2 SCC 205], we will now discuss the applicability of Haricharan Singh Josh case [(1997) 10 SCC 294] to the facts of this case bearing in mind that the High Court has relied on this case also to dismiss the election petition. It is true that in Josh case [(1997) 10 SCC 294] this Court extended the principle laid down in Dr Shipra case [(1996) 5 SCC 181] ***but then this Court in Jacob case [(1999) 4 SCC 274] in clear terms held that the application of the principle found in Dr Shipra case [(1996) 5 SCC 181] is confined only to the facts of that case; meaning thereby that it is applicable only in cases where the original affidavit filed before the High Court contained the omissions and not to copies of the affidavit supplied to the respondents.****Therefore, it is clear that the application of the principle in Dr Shipra case [(1996) 5 SCC 181] to the facts of Josh case [(1997) 10 SCC 294] is clearly impermissible. In that view of the matter, the decision in Josh case [(1997) 10 SCC 294] being contrary to Jacob case [(1999) 4 SCC 274] the same cannot be construed as a good law any more. Therefore, the High Court in the instant case could not have relied on Josh case [(1997) 10 SCC 294] to dismiss the election petition."*

(Emphasis supplied)

19. Therefore, it is well settled that, the expression "true copy" under Section 81(3) of the R.P. Act requires the copy to be substantially identical to the original Election Petition filed before the Court. Minor or formal discrepancies such as absence of notarization, notary stamp or signature of the identifying Advocate, which do not mislead or prejudice the Respondents in preparing their defence, do not render the copy untrue. In the present case,

the verification and affidavit appended to the copy of the Election Petition served to the Respondent No.2 were not duly notarized before the Notary Public or Oath Commissioner so also did not bear the signature of the identifying Advocate. Such omissions are merely curable formal defects and therefore, do not warrant dismissal of the Election Petition under Section 86(1) of the R.P. Act.

20. The Supreme Court in **G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC,** after an exhaustive analysis of catena of Judgments, while dealing with an identical issue pertaining to whether an election petition be dismissed merely on the ground of procedural flaws in case of non-compliance with the provisions enshrined under the R.P. Act and the Rules, 1961, held that:

> *"49. In T.M. Jacob v. C. Poulose [(1999) 4 SCC 274] this Court reiterated the doctrine of substantial compliance as mentioned in Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore, AIR 1964 SC 1545 : (1964) 3 SCR 573 and Subbarao [AIR 1964 SC 1027 : (1964) 6 SCR 213] and also introduced the doctrine of curability on the principles contained in CPC. It was held that the defect in the affidavit in that case was curable and was not of such a fatal nature as to attract dismissal of the election petition at the threshold.*
>
> *50. The doctrine of substantial compliance as well as the doctrine of curability were followed in V. Thirunavukkarasu [(2000) 2 SCC 294]. This Court held that a defect in the verification of an affidavit is not fatal to the election petition and it could be cured. Following Moiddin J. P. Modhuty v. P.T. Kunju Mohammad, (2000) 1 SCC 481 it was held that if the election petition falls foul of Order 6 Rule 16 and Order 7 Rule 11 CPC and does not disclose a cause of action then it has to be rejected at the threshold.*
>
> *51. Somewhat more recently, in Anil Vasudev Salgaonkar v. Naresh Kushali Shigaonkar [(2009) 9 SCC 310] this Court reiterated this position in law and held: (SCC p. 324, para 50)*
>
> > *"50. The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with."*
>
> ***52. The principles emerging from these decisions are that although non-compliance with the provisions of Section 83 of the Act is a curable defect, yet there must be substantial compliance with the provisions thereof. However, if there is total and complete non-compliance with the provisions of Section 83 of the Act, then the petition cannot be described as an election petition and may be dismissed at the threshold."***
>
> **(Emphasis supplied)**

21. Further, the Supreme Court in **K. Babu v. M. Swaraj, (2024) 4 SCC** held that;

> ***"13. Before us, arguments were advanced only upon non-compliance with Section 81(3) of the 1951 Act, warranting invocation of Section 86(1) thereof, and not on the other issue regarding lack of material facts and particulars in the pleadings, as required by Section 83 of the 1951 Act. In any event, it is well settled that non-compliance with the requirements of Section 83 of the 1951 Act is not fatal, as Section 86(1) thereof only speaks of non-compliance with Sections 81, 82 or 117 being the basis for dismissal of an election petition at the outset. Defects in an election petition that constitute non- compliance with Section 83 of the 1951 Act have been held to be curable defects*** *(see T. Phungzathang v. Hangkhanlian; Umesh Challiyil v. K.P. Rajendran; Ponnala Lakshmaiah*

v. Kommuri Pratap Reddy; G.M. Siddeshwar v. Prasanna Kumar; and A. Manju v. Prajwal Revanna). Further, once the High Court opined that a triable issue under Section 123(3) of the 1951 Act is made out, we find no grounds to interfere therewith."

(Emphasis supplied)

22. In the present case, although the Affidavit filed in support of the Election Petition does not strictly adhere to the format prescribed under Form 25 read with Rule 94A of the Rules, 1961, such defect, by itself, would be a curable irregularity, provided that the Election Petition otherwise contained specific averments and material facts constituting the alleged corrupt practices, clearly indicating the precise nature of the corrupt practice as contemplated under Section 123 of the R.P. Act, 1951. In such circumstances, it would amount to substantial compliance with the requirements of Section 83(1)(c) of the R.P. Act so also mere non-compliance with the prescribed form of affidavit would not render the Election Petition liable to be dismissed.

23. The aforesaid position finds support in the Judgment of the Supreme Court in **Thangjam Arunkumar v. Yumkham Erabot Singh,** reported in **(2023) 17 SCC 500**, wherein it was held that mere non-filing or defective filing of an affidavit in Form 25 does not vitiate the Election Petition if the averments made in the Election Petition otherwise disclose complete particulars of the alleged corrupt practice in substantial conformity with the statutory mandate. Paragraph Nos. 15 to 18 of the said Judgment, being relevant, are extracted below;

"15. More recently, in A. Manju v. Prajwal Revanna [A. Manju v. Prajwal Revanna, (2022) 3 SCC 269 : (2022) 2 SCC (Civ) 95], this Court dealt with the same question as to whether an election petition containing an allegation of corrupt practice but not supported by an affidavit in Form 25, is liable to be dismissed at the threshold. This Court had observed : (SCC p. 279, para 26)

*"26. However, we are not persuaded to agree with the conclusion arrived at by the High Court that the non-submission of Form 25 would lead to the dismissal of the election petition. We say so because, in our view, the observations made in Ponnala Lakshmaiah case [Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788] which have received the imprimatur of the three-Judge Bench in G.M. Siddeshwar case [*G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776 : (2013) 2 SCC (Civ) 715, appear not to have been appreciated in the correct perspective. In fact, G.M. Siddeshwar case [G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776 : (2013) 2 SCC (Civ) 715], has been cited by the learned Judge to dismiss the petition. If we look at the election petition, the prayer clause is followed by a verification. There is also a verifying affidavit in support of the election petition. Thus, factually it would not be appropriate to say that there is no affidavit in support of the petition, albeit not in Form 25. This was a curable defect and the learned Judge trying the election petition ought to have granted an opportunity to the appellant to file an affidavit in support of the petition in Form 25 in addition to the already existing affidavit filed with the election petition. In fact, a consideration of both the judgments of the Supreme Court referred to by the learned Judge i.e. Ponnala Lakshmaiah as well as G.M. Siddeshwar, ought to have resulted in a conclusion that the correct ratio in view of these facts was to permit the appellant to cure this defect by filing an affidavit in the prescribed form."*

(emphasis supplied)

16. The position of law that emerges from the above referred cases is clear. The requirement to file an affidavit under the proviso to Section 83(1)(c) is not mandatory. It is sufficient if there is substantial compliance. As the defect is curable, an opportunity may be granted to file the necessary affidavit.

17. In the instant case, the election petition contained an affidavit and also a verification. In this very affidavit, the election petitioner has

sworn on oath that the paragraphs where he has raised allegations of corrupt practice are true to the best of his knowledge. Though there is no separate and an independent affidavit with respect to the allegations of corrupt practice, there is substantial compliance of the requirements under Section 83(1)(c) of the Act.

18. We are in agreement with the conclusion of the High Court that there is substantial compliance of the requirements under Section 83(1)(c) of the Act and this finding satisfies the test laid down by this Court in Siddeshwar. Even the subsequent decision of this Court in Revanna [A. Manju v. Prajwal Revanna], supports the final conclusion arrived at by the High Court."

(Emphasis supplied)

24. The term "Corrupt Practice", as defined under Section 123 of the R.P. Act, is extracted below for ready reference;

"Section 123. Corrupt practices.— *The following shall be deemed to be corrupt practices for the purposes of this Act:—*

(1) "Bribery" that is to say—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election; or

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation.— For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purposes of, any election and duly entered in the account of election expenses referred to in section 78.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person [with the consent of the candidate or his election agent], with the free exercise of any electoral right: Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

[Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.]

(3-A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

(3-B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Explanation.— For the purposes of this clause, "sati" and "glorification" in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987 (3 of 1988).

(4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal, [***] of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person [with the consent of a candidate or his election agent] for the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by an elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.— In this clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(6) The incurring or authorizing of expenditure in contravention of section 77.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or by any other person [with the consent of a candidate or his election agent], any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person whether or not in the service of the Government and belonging to any of the following classes, namely:—

(a)gazetted officers;

(b)stipendiary judges and magistrates;

(c) members of the armed forces of the Union;

(d) members of the police forces;

(e) excise officers;

(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and

(g) such other class of persons in the service of the Government as may be prescribed:

[Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent [whether by reason of the office held by the candidate or for any other reason], such arrangements facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election;

(h) class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections;]

(8) Booth capturing by a candidate or his agent or other person.]

Explanation.— (1) In this section the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent [***] of that candidate.

(3) For the purposes of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union territory) or of a State Government shall be conclusive proof—

(i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and

(ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service such person ceased to be in such service with effect from the said date.

(4) For the purposes of clause (8), "booth capturing" shall have the same meaning as in section 135A."

25. However, in the present case, though it is repeatedly alleged in the Election Petition that the returned candidate committed "corrupt practices," it does not specifically identify the precise nature or category of such corrupt practice, as contemplated under Section 123 of the R.P. Act, 1951.

26. As is revealed from the Plaint/ Election Petition, the Election Petitioner merely has made general assertions of corrupt conduct, without correlating the alleged acts to any of the statutory definitions of "Corrupt Practice" as enumerated under Section 123 of the R.P. Act, such as bribery, undue influence, or false statements regarding candidate's personal character or conduct. Furthermore, the Election Petitioner has failed to furnish the necessary particulars as required under Section 83(1)(b) of the R.P. Act such as the material facts, dates, places, and persons involved in the alleged corrupt practice. In absence of such specific pleadings and material facts and full particulars constituting the alleged "corrupt practice", it cannot be said to be amounting to substantial compliance with the statutory provisions enshrined under Section 83 of the R.P. Act governing the proper pleading of corrupt practices in an Election Petition.

27. Furthermore, it is pertinent to mention here that even though such a contention was raised in the present application under Order VII Rule 11 of CPC, so also in the Written Statement, despite the limited opportunity available under Section 86(5) of the R.P. Act to seek amendment or amplification of the particulars of "Corrupt Practice" already pleaded in the petition, no effort was made by the Election Petitioner to avail the benefit of the statutory provision to cure such defects and prevent the dismissal of the Election petition on that ground.

28. The Supreme Court in Ravinder Singh (Supra) held that;

"10. Proviso to Section 83(1) of the Act lays down, in mandatory terms, that where an election petitioner alleges any corrupt practice, the election petition shall also be accompanied by an affidavit, in the prescribed form, in support of the allegations of such practice and the particulars thereof. The affidavit, which has been filed in support of the election petition, does not at all deal with the charge of bribery falling under Section 123(1) of the Act. Leaving aside the questions that the affidavit is not even in the prescribed form—Form 25 of the Conduct of Elections Rules, the allegations of corrupt practice made in the election petition are not supported by the otherwise defective affidavit either. All the names of the informants which have been given in the affidavit relate to the corrupt practice under Section 123(4) and the affidavit in this respect is a verbatim reproduction of the verification clause of the election petition concerning corrupt practice under Section 123(4). No name of any informant has been mentioned in respect of the allegations of corrupt practice under Section 123(1) in the affidavit. In the absence of the requisite affidavit filed in support of the allegation of corrupt practice under Section 123(1) of the Act, as detailed in the election petition, no issue could be raised for trial.

11. Section 83 of the Act is mandatory in character and requires not only a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the election petition but under the proviso to Section 83(1) of the Act, the election petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The reason for this insistence is obvious. It is necessary for an election petitioner to make such a charge with full responsibility and to prevent

any fishing and roving inquiry and save the returned candidate from being taken by surprise. In the absence of proper affidavit, in the prescribed form, filed in support of the corrupt practice of bribery, the allegation pertaining thereto, could not be put to trial — the defect being of a fatal nature."

(Emphasis supplied)

29. The Supreme Court in a recent judgment in **Karim Uddin Barbhuiya** (Supra) held that;

"15. The legal position with regard to the non- compliance with the requirement of Section 83(1)(a) of the R.P. Act and the rejection of Election Petition under Order VII Rule 11, CPC has also been regurgitated recently by this Court in case Kannimozhi Karunanidhi v. A. Santhana Kumar (supra):—

"28. The legal position enunciated in afore- stated cases may be summed up as under:—

i. Section 83(1)(a) of R.P. Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.

ii. Material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, it traversed in order to support his right to the judgement of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of paint would become bad.

iii. Material facts mean the entire bundle of fact which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary..

iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.

v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.

vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petition relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act."

20. So far as allegations of "Corrupt practice" are concerned, the respondent No.1 was required to make concise statement of material facts as to how the appellant had indulged into "Corrupt practice" of undue influence by directly or indirectly interfering or attempted to interfere with the free exercise of any electoral right. Mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of making a concise statement of the "material facts" in the Election Petition. The "material facts" which are primary and basic facts have to be pleaded in support of the case set up by the

Election petitioner to show his cause of action. Any omission of a single material fact would lead to an incomplete cause of action entitling the returned candidate to pray for dismissal of Election petition under Order VII Rule 11(a) of CPC read with Section 83(1)(a) of the RP Act. The said legal position has been well settled by this Court in Azhar Hussain v. Rajiv Gandhi, wherein this Court after referring to the earlier pronouncements in Samant N. Balkrishna v. George Fernandez and Shri Udhav Singh v. Madhav Rao Scindia, observed that the omission of a single material fact would lead to incomplete cause of action, and that an Election petition without the material facts is not an Election petition at all. It was further held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) of the Act and an Election petition can be and must be dismissed, if it suffers from any such vice."

(Emphasis Supplied)

30. It is pertinent to mention here that, in **Kannimozhi Karunanidhi** (Supra), the Supreme Court dismissed an Election Petition, wherein an allegation was made regarding suppression of income tax details of the returned candidate's spouse in her nomination affidavit. The Election Petition was found to be vague and bereft of material facts showing how such non-disclosure amounted to non-compliance with the R.P. Act or how it materially affected the election result. Further, the Supreme Court categorically observed that omission of even a single material fact renders the Election Petition incomplete so also liable to be rejected at the threshold under Order VII Rule 11 of the CPC. The Court further clarified the distinction between "material facts" and "material particulars" reiterating that, the failure to plead material facts is fatal to the Election Petition and no amendment of the pleading could be allowed to introduce such material facts after the time-limit prescribed for filing the election petition, whereas the absence of material particulars can be cured at a later stage by an appropriate amendment. Paragraph Nos. 28 to 34 of the said judgment, being relevant, are extracted below for ready reference:

"28. The legal position enunciated in afore-stated cases may be summed up as under:—

i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.

ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of the court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.

iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.

iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.

v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.

vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.

Conclusion:

29. In the light of the afore-stated legal position, let us see whether the respondent/election petitioner had complied with the requirements of Section 83(1)(a) of the RP Act by stating "material facts" in the Election petition, constituting cause of action and the ground as contemplated in Section 100(1)(d)(iv) of the RP Act, for declaring the election of the Appellant-returned candidate to be void. The bone of contention raised by the learned counsel appearing for the respondent-election petitioner is that the Election Commission of India had called for the information prescribing the Form 26 in regard to status of filing of income tax return of candidates and their family members by exercising powers under Article 324 of the Constitution of India and in that the petitioner had provided information that her spouse was working as consultant at foreign country and earning salary against the column No. 8, Serial No. 9(b) and 9A(b), respectively, under Part A of Form 26. Besides, she had mentioned "No" to the query regarding income tax dues of her spouse, mentioned as "Ethnallii" in Tamil language. She had further stated that her spouse had bank accounts in Singapore with deposit of dollars against column No. 7 Serial No. (ii) of column in Part A of Form 26 but had failed to disclose the status of filing income tax return of her spouse in the foreign country. He therefore submitted that these material facts which have already been stated in the Election petition, were sufficient to constitute cause of action for filing Election petition under Section 100(1)(d)(iv) of the RP Act.

30. It may be noted the precise allegations made by the respondent-election petitioner in para 5 to 9 of his Election petition have already been reproduced hereinbefore, from which it clearly transpires that the election petitioner i.e., the respondent has made very bald and vague allegations without stating the material facts as to how there was non-compliance of any of the provisions of the Constitution of India or of the RP Act or of the rules made thereunder. If the averments made in the Election petition are read in juxtaposition to the information furnished by the appellant-returned candidate in Form No. 26, it clearly emerges that against the information sought about the PAN number of the spouse of the appellant, it has been stated "No PAN No.", "Spouse K. Aradhanan Foreign Citizenship". Against the information sought with regard to "The financial year for which the last income tax return has been filed", the information supplied by the appellant about her spouse is "Not applicable". The appellant has filled in all the columns of Form No. 26 by furnishing the information with regard to her Permanent Account Number and status of filing of income tax return etc. and of her husband wherever applicable. If according to the respondent-election petitioner, the appellant- returned candidate had suppressed the Permanent Account Number of her spouse and also about the non-payment of income tax of her spouse in the foreign country, it was obligatory on the part of the Election petitioner to state in the Election petition as to what was the Permanent Account Number of the spouse of the returned candidate in India which was suppressed by her and how the other details furnished about her husband in the said Form No. 26 were incomplete or false.

31. Mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of stating material facts in the Election Petition. As well settled not only positive statement of facts, even a positive statement of negative fact is also required to be stated, as

it would be a material fact constituting a cause of action. The material facts which are primary and basic facts have to be pleaded by the Election petitioner in support of the case set up by him to show his cause of action and omission of a single material fact would lead to an incomplete cause of action, entitling the returned candidate to pray for dismissal of Election petition under Order VII Rule 11(a) CPC read with Section 83(1)(a) of the RP Act.

32. It is also significant to note that an affidavit in Form 26 along with the nomination paper, is required to be furnished by the candidate under Rule 4A of the said Rules read with Section 33 of the said Act. The Returning Officer is empowered either on the objections made to any nomination or on his own motion, to reject any nomination on the grounds mentioned in Section 36(2), including the ground that there has been a failure to comply with any of the provisions of Section 33 of the Act. However, at the time of scrutiny of the nomination paper and the affidavit in Form 26 furnished by the Appellant-returned candidate, neither any objection was raised, nor the Returning Officer had found any lapse or non-compliance of Section 33 or Rule 4A of the Rules. Assuming that the election petitioner did not have the opportunity to see the Form No. 26 filed in by the Appellant-returned candidate, when she submitted the same to the Returning Officer, and assuming that the Returning Officer had not properly scrutinized the nomination paper of the appellant, and assuming that the election petitioner had a right to question the same by filing the Election petition under Section 100(1)(d)(iv) of the said Act, then also there are no material facts stated in the petition constituting cause of action under Section 100(1)(d)(iv) of the RP Act. In absence of material facts constituting cause of action for filing Election petition under Section 100(1)(d)(iv) of the said Act, the Election petition is required to be dismissed under Order VII Rule 11(a) CPC read with Section 83(1)(a) of the RP Act.

33. As elaborately discussed earlier, Section 83(1)(a) of RP Act mandates that an Election Petition shall contain a concise statement of material facts on which the petitioner relies, and which facts constitute a cause of action. Such facts would include positive statement of facts as also positive averment of negative fact. Omission of a single fact would lead to incomplete cause of action. So far as the present petition is concerned, there is no averment made as to how there was non-compliance with provisions of the Constitution or of RP Act or of the Rules or Order made thereunder and as to how such non- compliance had materially affected the result of the election, so as to attract the ground under Section 100(1)(d)(iv) of the RP Act, for declaring the election to be void. The omission to state such vital and basic facts has rendered the petition liable to be dismissed under Order VII, Rule 11(a) CPC read with Section 83(1)(a) of the RP Act, 1951.

34. In that view of the matter, Election petition being no. 3/2019 filed by the respondent-election petitioner deserves to be dismissed, and is accordingly dismissed.

(Emphasis supplied)

31. In view of the legal provisions, the settled position of law, pleadings made in the Election Petition and the grounds urged in the I.A. so also the submissions made by the learned Senior Counsel for Respondent No.1, as detailed above, this Court is of the considered view that, so far as the defects relating to affidavit, verification so also the supply of true copy of the Election Petition to the Respondent No.2, the Election Petition No.30 of 2024 suffers from minor procedural or formal defects which are curable in nature under the Doctrine of Substantial Compliance. However, the omission on the part of the Election Petitioner to specifically plead and mention the precise nature of the alleged 'Corrupt Practice', as envisaged under Section 123 of the R.P. Act, constitutes a fatal defect going to the root of the matter, which cannot be cured even by invoking the Doctrine of Substantial Compliance. That apart, the Election Petitioner has also failed to file documents along with the Election Petition in form of a list to substantiate the stand of alleged corrupt practices as held by the Supreme Court in **P.V. Guru Raj Reddy** (Supra), thereby not only keeping the Returned Candidate in dark and depriving him of a fair opportunity to file his Written Statement

effectively in the Election Petition, but also preventing this Court from forming even a prima facie view pertaining to the existence of the alleged corrupt practices at the threshold. Therefore, such failure to furnish supporting documents at the time of presenting the Election Petition also amounts to a further fatal defect, rendering the Election Petition liable to be dismissed at the very outset.

32. In the absence of such specific averments made in the Election Petition/Plaint and documents to substantiate such stand, constituting a defined "Corrupt Practice" within the meaning of Section 123 of the R.P. Act, this Court is of further view that the Election Petitioner has failed to disclose any material facts regarding corrupt practice, to be tried by this Court.

33. Accordingly, the prayer made in the I.A. for rejection of the Plaint/Election Petition under Order VII Rule-11 stands allowed.

34. As the Application for rejection of Plaint stands allowed, this Court is of the view that the relief sought under Order-VI Rule-16 of C.P.C. has become redundant.

35. Accordingly, the I.A. stands disposed of. Consequently, the ELPET No.30 of 2024 stands rejected.

36. Office is directed to communicate the substance of this order to the Election Commission and the Speaker of the Lok Sabha at the earliest, so also an authenticated copy of this order to the Election Commission, in terms of Section 103 of the R.P. Act, read with Rule 16, under Chapter-XXXIII of the High Court of Orissa Rules, 1948.

Sd/-

S. K. MISHRA, Judge

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.
GORAKHA NATH YADAVA Digitally signed by GORAKHA NATH YADAVA Date: 2025.12.27 13:05:19 +05'30'